

Appl. No. 10/820,590  
Docket No. 9031R  
Amdt. dated October 27, 2008  
Reply to Office Action mailed on May 28, 2008  
Customer No. 27752

## REMARKS

### Claim Status

Claims 1-3, 5-12, and 17-23 are pending in the present application. No additional claims fee is believed to be due.

Claims 13-16 are cancelled without prejudice.

Claim 1 is amended to change “tooth whitening composition” to “a layer of a tooth whitening composition.” Support for the amendment can be found, for example, at pages 10-11 of the specification and in the Figures. Claim 17 is amended to make the language coincide with that in amended claim 1.

Claims 20 and 21 are amended to correct a typographical error regarding the term “hours” which should have read “holes.” Support for this amendment can be found, for example, at page 10 and Figure 7 of the specification.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Rejection Under 35 USC §112, Second Paragraph

The Office Action stated that Claims 20 and 21 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 20 & 21 are amended to correct a typographical error. It is believed this amendment moots the rejection and Applicants respectfully request the rejection be withdrawn.

### Rejection Under 35 USC §103(a) Over Godbey in view of Sagel et al.

Claims 1-3, 5-8, 11-12, and 17-23 have been rejected under 35 USC §103(a) as being unpatentable over U.S. App. Pub. No. 2002/0187181 (Godbey) in view of U.S. Pat. No. 5,891,453 (Sagel). The Office Action stated a mixture is “a composition of two or more substances that are not chemically combined with each other and are capable of

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being separated” and that Godbey encompasses a product comprising a mixture of polymers. Applicants traverse this rejection and respectfully request reconsideration.

While Applicants disagree with the Official Action’s interpretation of “mixture,” Applicants have amended the claims in hopes of advancing prosecution. Additionally, Applicants assert that Godbey in view of Sagel does not establish a *prima facie* case of obviousness because it fails to teach all of the recited claim elements of amended independent claim 1. Specifically, Godbey does not teach a layer of a tooth whitening composition comprising first and second polymers wherein said first polymer is polyethylene oxide and said second polymer is polyvinyl alcohol. Because Godbey fails to teach all of the recited elements of amended claim 1 and Sagel et al. fail to alleviate the deficient teaching of Godbey, Applicants submit that independent claim 1 and all claims dependent thereon are nonobvious over Godbey in view of Sagel et al. Reconsideration is respectfully requested.

#### Rejection Under 35 USC §103(a) Over Godbey in view of Sagel further in view of Xu

Claims 9-10 have been rejected under 35 USC §103(a) as being unpatentable over U.S. App. Pub. No. 2002/0187181 (Godbey) in view of U.S. Pat. No. 5,891,453 (Sagel) further in view of U.S. App. Pub. No. 2002/0187111 (Xu). This rejection is traversed because, as stated above, Godbey in view of Sagel does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of amended independent claim 1. Additionally, Xu does not fill the void in the teachings of Godbey and Sagel as the Office Action states that Xu “differs from the instant claims in so far as it does not disclose a second polymer such as polyvinyl alcohol” (page 6). As Godbey in view of Sagel further in view of Xu fail to teach all of the claim limitations of independent claim 1 and claims 9 and 10 depend from claim 1, Applicants submit that the combination of references additionally fail to establish a *prima facie* case of obviousness for claims 9 and 10. Applicants submit that claims 9 and 10 are nonobvious over Godbey in view Sagel further in view of Xu and respectfully request reconsideration.

#### Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In

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view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date: October 27, 2008  
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